

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

May 16, 2007

Meeting

Chairman Ron Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m. Roll call showed the following Board Members present: Ron Poff, Daniel A. Naas, and Stacy Wall.

Others in attendance: Assistant City Manager Brad Vath, City Planner/Zoning Administrator Matthew Spring and Acting Board Secretary Marilyn Fennell.

Citizens signing the register: George Timmer and Paul D. Lee.

Excuse Board Members

Mrs. Wall moved to excuse Mr. Rodrigues and Mr. Borchers from the meeting. Mr. Poff seconded the motion. Motion passed 3-0.

Board Minutes- April 18, 2007

Mrs. Wall moved to adopt the minutes of the April 18, 2007 Board of Zoning Appeals meeting as presented, seconded by Mr. Naas. Motion carried. Ayes: Wall, Naas, and Poff. Mr. Poff stated he was not in attendance but he was voting for their acceptance. Nays: None.

Citizen Comments

There were no citizen comments on items not on the agenda.

Administration of Oath

Mr. Vath, notary, swore in all citizens by asking them if they intended to speak during the public hearing to please stand and raise their right hand. Citizens were asked if they solemnly swore or affirm to tell the truth, the whole truth and nothing but the truth, so help them God. If so, answer, "I do." Citizens wishing to give testimony answered, "I do."

New Business

Chairman Poff explained the guidelines and procedures for the meeting and public hearings. He advised the applicants that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicants request, the applicant may file the appropriate permits after the 10-day waiting period has expired.

Case No. 04-07- Paul Lee, 17 N. Fourth St.- Variance of one (1) parking space

Case No. 04-07: The applicant, Paul Lee, 17 N. Fourth Street, Inlot 4035, R-2 (Urban Residential Zoning District)- variance of one (1) off-street parking space as noted in Code §154.078(A)(1) in conjunction with the expansion of the off-street parking area located at 17 N. Fourth Street required for the conversion of the premises into a two-family dwelling unit.

Mr. Spring said the applicant was seeking a variance of one off-street parking space in conjunction of the expansion of the off-street parking area at 17 N. Fourth St. The applicant has indicated that he will be seeking Special Use approval from the Planning Board on June 12, 2007 to convert the current single-family dwelling into a two-family dwelling unit. The two-family unit requires 4 off-street parking spaces per Code §154.078(A)(1).

The applicant has indicated he will expand the existing off-street parking area to a total of 3 spaces (2 existing) thus requiring the variance of 1 space.

Staff noted that the Board of Zoning Appeals has jurisdiction in this case under Code §154.175(E)(4) and may reduce the applicable parking or loading facilities required by not more than 1 parking space or 30% of the required facilities, whichever number is greater. Staff also noted that the standards must be met in regard to the granting of variances. Mr. Spring read through the list of 4 standards.

Mr. Spring said the expansion of the off-street parking area at 17 N. Fourth St. will entail the demolition of a portion at the rear of the existing house structure. Staff notes that any demolition of structures in excess of 200 sq. ft. requires an approved demolition permit issued through the City Manager's office. Also on June 12, 2007, the applicant will seek Planning Board approval for a Special Use Permit for the utilization of 17 N. Fourth Street as a two-family dwelling unit. A sample motion was given in the staff report to grant or deny the variance. A letter from a neighbor, Richard Roeth, regarding the case was also included in the packet.

Mr. Lee was present and was sworn in by Mr. Vath. Mr. Lee, 152 W. Franklin Street, stated the house was originally a two family unit and has been used as single-family unit for a number of years. The addition on the back is to be removed to accommodate the third off-street parking space. He thought it would be a benefit to turn the dwelling back to a two-family unit as they have had two different single families rent there with 4-6 children. There is no yard to speak of. The first family had 3 teenagers that drove and there were a total of 6 vehicles at one time. He was hoping to have singles or a couple as renters. This will be more low-key; someone that doesn't require any back yard.

Mr. Poff asked Mr. Lee for clarification, on the map provided, of the portion of the house to be removed. He also showed where the driveway is located and where the third space would be located. Mr. Poff asked the Board for further questions. Mr. Naas asked if there was room for 4 spaces. Mr. Lee said "not really." Mr. Spring said the standard measurement for a parking space is 10' x 20' and there is a requirement that he maintain 6' off the western (rear) property line. Mr. Spring said staff looked at the site about a month ago and discussed several of the options at that time. Mr. Lee said these are basically one-bedroom apartments and renters would more than likely only have one vehicle.

Mr. Poff said when Mr. Lee first came to the Board when he first purchased the property he had stated that he was not going to have any problem with the parking. Mr. Lee said that was correct. Mr. Poff asked over the course of time, he realized that in renting to different persons that has created problems. Mr. Poff asked if solution was to only rent to singles or a couple. Mr. Lee said it would be a solution. Mrs. Wall asked if the previous tenants had been evicted. Mr. Lee said they just moved out and the property is vacant at this time. Mr. Naas asked if the units were one-bedroom units. Mr. Lee said they were at one time. The tenants opened up

doorways and an archway that opened up the first floor.

Mrs. Wall asked staff if it was their opinion that it was better for Mr. Lee to ask for the variance rather than squeeze in the fourth space. Mr. Vath said it was the way that the applicant wished to move forward so staff proceeded with the application for this variance. Mr. Lee wanted to try to maintain some space behind the structure and he was informed of the 6' setback to comply with code and has to remove some of the asphalt.

Mr. Lee said presently there are no limitations as to how many people can park, it is a single-family dwelling. He said he couldn't tell a tenant how many vehicles that they could have. He said he was marketing for a single person or a couple which would maintain a low volume of traffic. Mrs. Wall asked if the site drawing was to scale. Mr. Lee said it was pretty close. He showed her some details on the drawing. Mr. Vath said it might be pretty tight for someone to pull into the first parking space if 4 spaces were provided. Mr. Lee thought there could still be some sort of patio behind the house.

Mr. Naas asked staff about the 6' setback. Mr. Spring said that residential off-street parking areas are required to be 6' off the property line. Mr. Naas said obviously the driveway is asphalt and is not 6' off the property line. Mr. Vath said the existing drive that goes east to west is a shared common driveway between the three properties in the area that is non-conforming. Mr. Vath said they have worked with the applicant to get the proposed revised parking area as compliant with code as possible. Mr. Vath said the shared drive was there long before Mr. Lee owned the property. Mr. Lee thought it had been an alley that was vacated.

Mr. Poff asked for further questions. Mr. Naas asked Mr. Spring about the letter received from the adjacent property owner, Mr. Roeth and if it was relevant to the variance request before the Board. Mr. Vath said he was not legal counsel but Mr. Roeth had sent a letter to the Board. The variance specifically asked for is for the number of parking spaces and those spaces are outside the common shared driveway that is being discussed. Mr. Roeth has expressed his concerns and Mr. Vath said it is a private matter between two property owners over the property line. Mr. Roeth indicated that he has made reports to the Police Department regarding the access. Mr. Naas said that the Board is charged with granting of a variance that will not be detrimental to public health, safety, convenience, or general welfare or injurious to other properties in the vicinity.

Mr. Vath said that the Board needs to make that determination if the granting of one less space would allow that to happen. Mr. Vath stated that the three Board members must all vote affirmatively in order for the variance to be granted. If it is a 2-1 vote, then it is a denial. Mr. Lee would have the option to appeal the decision to City Council if that would occur.

Mrs. Wall asked staff if Mr. Lee was seeking approval at the next Planning Board meeting for a Special Use Permit and it was denied, could this be a moot issue. Mr. Vath said the motion could be that the Board approves the variance with the condition that the

Special Use Permit must be approved or the variance is void. Mr. Vath said technically the BZA needs to act upon variances before the Planning Board considers any future actions. This is the normal sequence of action. Mr. Poff said the request could be tabled but the process would be held up another month. Mr. Vath said that was correct but it was an option for the Board.

Mr. Poff said he was concerned with the neighbor. There are current problems and is this action going to take care of the problem. Mr. Lee said Mr. Roeth was welcome to come to the meeting. The driveway issue is always going to be an issue with Mr. Roeth. Mr. Roeth has to drive across Mr. Lee's property to get to his garage. Mr. Lee said he has never called the police on him when he has parked in the drive. Mr. Roeth even called the police when the church people were trying to move out. There will always be an issue with the driveway.

Mr. Lee said he thinks it is a good use for the neighborhood. The location is downtown and there is limited parking. The two-family low volume tenants will be better for the area. By removing the section of the house, it should make the turning radius better.

Mrs. Wall asked if there was going to be a rear door to the property when the section is taken off. Mr. Lee said there will be a front and a rear door. Mr. Lee said the parking will be a north/south configuration. Unloading groceries will be much easier.

Mr. Naas said there are always two sides to a story and Mr. Lee was correct in that Mr. Roeth could have been present this evening. Mr. Naas said that was why he was looking to see if there was any possibility to have 4 spaces. Mr. Lee thought 3 spaces were better than having four cars back there. It might be more for the neighbor to complain about. Mrs. Wall asked if the police were notified of the meeting. Mr. Vath asked if the police were on the distribution list. Mrs. Fennell did not think that they were. Mr. Naas said the driveway is not germane to the actual parking.

Mr. Poff said there were three options for the Board, to table the request, grant the variance, or deny it. Mrs. Wall said it appears the neighbor dispute has to do with the driveway and the variance is unrelated to the neighbor's dispute. The parking spaces are not on the neighbor's property and are unrelated to the issue before the Board.

Mrs. Wall moved in **Case 04-07 to grant the variance of one off-street parking space to the four spaces required in Code §154.078(A)(1) contingent on Planning Board approval for the conversion of one family dwelling to a two family dwelling at 17 N. Fourth Street.** Mr. Poff seconded the motion. Motion passed 3-0. Ayes: Wall, Poff, and Naas Nays: None.

Mr. Poff informed Mr. Lee that the variance was granted and there was a 10-day waiting period before permits can be obtained.

First Street (Kyle Park), Inlot 2451- 24.5' from required elevation above 100-flood elevation

storage facility in Kyle Park. The proposed restroom and storage facility is within a Zone A-Special Flood Hazard Area as designated by FEMA, being the retarding basin of the Taylorsville Dam. The facility will be a nonresidential, non-habitable structure and utilized as a restroom and storage structure for Junior Baseball. Mr. Spring read thru Code §153.31 from the staff report. The proposed restroom/storage facility will be constructed at an elevation of 790.5 feet above sea level. The Base Flood Elevation (BFE) is 813 feet above sea level, thus 2 feet above the BFE is 815. Therefore the City requires a variance of 24.5 feet. Staff notes that this nonresidential and non-habitable structure will not be constructed two feet above the base flood elevation (as required in §153.31(B)), nor will the structure be flood proofed as required in §153.31(B)(1-3).

Mr. Spring said that the Board of Zoning Appeals has jurisdiction in this case to grant a variance under code §153.25(A) and under §153.25(D) regarding flood issues. He read through points 1-11. He also noted the conditions under Code §153.26.

His additional notes included that, 1) the proposed structure also lies within the Taylorsville dam retarding basin of the Miami Conservancy District (MCD), and therefore requires a permit from the MCD. Should the BZA grant the requested variance, the City will utilize "credits" with the MCD in order to obtain an approved permit from the MCD. Tipp City generates credits with the MCD when material is removed from the retarding basin. 2) If the BZA grants the requested variance, the City will seek Planning Board site plan approval at the June 12, 2007 meeting. 3) A similar variance request was reviewed by the BZA on November 21, 2001. This request resulted in a 2-2 tie vote. With only four (4) members on the BZA at that time, the variance request was denied. The case was appealed to the City Council. On December 17, 2001 Council unanimously overturned the denial and granted the variance, which allowed for the construction of the existing restrooms by the soccer fields.

A sample motion for approval/denial was provided the staff report.

Mr. Poff asked for comments or questions. Mr. Vath, speaking for City Engineer Scott Vagedes, said the structure will be constructed as a split-face block building. There are no sites within Kyle Park that above the 100 year flood plain. The area currently is used for most of the baseball activities and porta-potties are being used. The structure will not be in a floodway. There are a significant number of families and individuals using Kyle Park and the 12 diamonds. On a temporary basis, Jr. Baseball is using metal storage bins.

Mrs. Wall said she does understand the need for the restrooms but her concern was under Code §153.26(E) & (F). She asked if the City was self-insured. Mr. Vath said flood insurance is a separate policy thru FEMA and he said there is currently an exemption for City owned facilities for flood insurance. There is no additional cost for this occurring unless they would change the law and require insurance for government owned facilities then there would be a cost. The need to provide sanitation and services for the public that uses Kyle Park is the reason for this request. Mrs.

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Wall said she knew there was some discussion regarding a concession stand. Mr. Vath said the design of the restroom/storage building could add a wing, an L or T. A separate concession building would require the same process as this building. Mr. Poff asked if this structure was to be built by the City or Jr. Baseball. Mr. Vath said at this time it is a City project and is listed in the City budget. He stated that that had been an application to Ohio Dept. of Natural Resources Natureworks Grant, which the City did not receive. That would have been for \$75,000 and the project is estimated at \$150,000.

Mr. Poff said he uses the park, not to play ball, but he would prefer to see a structure rather porta-potties. Mr. Vath said he would not guarantee that there would not be porta-potties. This structure is only a 3-4 stall facility but it will provide some relief.

Mr. George Timmer came to the podium and asked where the facility would be located in the park. Mr. Vath said it would be in the middle of the 8 new baseball diamonds. Mr. Timmer was shown the location on the drawing. Mr. Vath said he had not known the location to flood in the 6 years that he has been in Tipp City. Mr. Poff asked Mr. Timmer to give the location of his property. He did so; his property is to the north of Kyle Park.

Mr. Naas said he would also like to see the elimination of porta-potties but did ask the efforts to see that fixtures and systems that are the least likely to be damaged by a flood. Mr. Vath said stainless, prison-grade fixtures and bare block walls are to be used. There will need to be a small grinder, injector pump adjacent to the building where the sewage will go into it and be forced into the sanitary sewer force main which basically runs along S. First Street. That grinder pump could be flooded out. If there is that kind of flooding in Kyle Park, the electric circuits would be thrown and they would need to be reset after drying out. Mr. Naas asked the flooding history of the current facility. Mr. Vath said it has never flooded since it was built in 2001. Mr. Timmer also commented that he has never seen that area flood in his lifetime.

Mrs. Wall asked if the variance request was more than what was being asked for, referring to §153.31(B). Mr. Spring said when he was preparing the staff report, he said he struggled with which section needed to be varied. He continued that if the variance was not based on the height above sea level and it was essentially agreed that you were building the structure in the flood plain, then the Board is required to look at the other subsections of §153.31(B) regarding certain structure components. Mr. Poff said the City receives credits from the Miami Conservancy District. Mr. Spring gave an example: if the City digs a big hole and moves that dirt to the top of some mountain, then the City has gained credits with MCD. He said the City has a lot of those credits built up. Even though the City is putting a structure there that potentially raises the flood plain, we'll just pay that off to the MCD by essentially using some credits which brings that flood plain back down to where it was before. Mr. Vath said the City has a permit for Kyle Park and his understanding was that allows for structures like this to be built in the Conservancy District.

**Old Business
Miscellaneous**

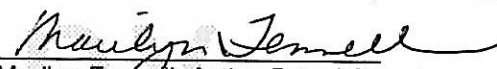
Adjournment

Mr. Naas moved to grant a 24.5 foot variance to Code §153.31(B) to allow for the construction of a nonresidential structure at an elevation of 790.5 feet above sea level rather than the required 815 feet above sea level. Mr. Poff seconded the motion. Motion passed 3-0. Ayes: Naas, Poff, and Wall. Nays: None.

There was no Old Business or Miscellaneous to discuss.

There being no further business, Mr. Naas **moved to adjourn the meeting**, seconded by Mr. Poff and unanimously approved. **Motion carried.** Chairman Poff declared the meeting adjourned at 8:29 p.m.


Ron Poff, Chairman

Attest: 
Marilyn Fennell, Acting Board Secretary

